

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Marcus Cable of Alabama, L.L.C., d/b/a Charter Communications	)	CSR 5778-E
	)	
Petition for Determination of Effective Competition in Bibb County, Alabama	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 17, 2002**

**Released: January 18, 2002**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Marcus Cable of Alabama, L.L.C., d/b/a Charter Communications ("Marcus") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and Sections 76.7(a)(1) and 76.905(b)(1) of the Commission's rules for a determination of effective competition in the unincorporated areas of Bibb County, Alabama (the "Franchise Area"). Marcus alleges that its cable system serving the Franchise Area is subject to effective competition and is therefore exempt from cable rate regulation. Marcus claims the presence of effective competition in the Franchise Area because fewer than thirty percent of the households subscribe to the cable services of its cable system. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>1</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>2</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>3</sup> Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."<sup>4</sup> For these purposes, the Commission accepts census data as an appropriate measure of households and defines households as occupied housing units.<sup>5</sup> The

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<sup>1</sup>47 C.F.R. § 76.906.

<sup>2</sup>47 C.F.R. § 76.905.

<sup>3</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>4</sup>47 U.S.C § 543(l)(1)(A).

<sup>5</sup>See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 4316, 4325-26 (1994).

Commission has stated:

The first statutory test for effective competition is fulfilled when fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system. The measurement of subscribership under this test will be based on the subscribership of the particular cable system in question, and not on the aggregation of the subscriberships of all cable systems and competitors in the franchise area.<sup>6</sup>

3. Marcus submits sufficient evidence regarding household and subscriber data, which demonstrate that its cable system serves less than 30 percent of households in the Franchise Area. Marcus provided 2000 Census Bureau household data that indicates that there are 7,421 households in the Franchise Area. Marcus also provides the count of actual subscribers in the Franchise Area, which it used to calculate subscriber-to-household penetration ratios for the Franchise Area. The data establishes that Marcus has a total of 362 subscribers in its Franchise Area of 7,421 households resulting in a penetration ratio of 4.87 percent.<sup>7</sup> Based on this record, we conclude that Marcus has demonstrated that its cable system meets the requirements of low penetration effective competition under our rules, and we grant its petition.

### III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Marcus Cable of Alabama, L.L.C., d/b/a Charter Communications **IS GRANTED**.

5. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>8</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>6</sup>See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 5631 (1993); 47 C.F.R. § 76.915(a).

<sup>7</sup> Petition at 2 and Exhibits 1 and 2.

<sup>8</sup> 47 C.F.R. 0.321.